

ESTTA Tracking number: **ESTTA647839**Filing date: **12/31/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	3PMC, LLC
Granted to Date of previous extension	12/31/2014
Address	25 Lighthouse Road Ocracoke, NC 27960 UNITED STATES

Attorney information	Matthew J. Schonauer Standley Law Group LLP 6300 Riverside Drive Dublin, OH 43017 UNITED STATES trademarks@standleyllp.com, mschonauer@standleyllp.com Phone: 6147925555
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Applicant Information

Application No	86033388	Publication date	09/02/2014
Opposition Filing Date	12/31/2014	Opposition Period Ends	12/31/2014
Applicant	Huggins, Stacy Lee 3930 Garden Road Richmond, VA 23235 UNITED STATES		

Goods/Services Affected by OppositionClass 025. First Use: 2012/08/13 First Use In Commerce: 2012/08/13
All goods and services in the class are opposed, namely: T-shirts; Tee shirts**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86493498	Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	

Attachments	Opposition.pdf(34065 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew J. Schonauer/
Name	Matthew J. Schonauer
Date	12/31/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/033,388
Filed on 31 December 2014
For the Mark ‘COKE HEAD
Published in the Official Gazette (Trademarks) on 2 September 2014

3PMC, LLC Opposer, v. Stacy Lee Huggins Applicant.	Opposition No. _____
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Dear Commissioner:

In the matter of U.S. Trademark Application Serial No. 86/033,388, filed August 9, 2013 by Stacy Lee Huggins (“Applicant”), to register the mark ‘COKE HEAD in connection with “T-shirts; Tee shirts” in International Class 25, and published in the Official Gazette on September 2, 2014, 3PMC, LLC (“Opposer”) believes that it will be damaged by registration of Applicant’s application and hereby opposes the same pursuant to 15 U.S.C. § 1063. As grounds for opposition it is alleged:

1. Applicant is the record owner of U.S. Trademark Application Serial No. 86/033,388 for the mark ‘COKE HEAD for use in connection with “T-shirts; Tee shirts” goods (“Applicant’s Goods”) in International Class 25.

2. Opposer is a limited liability company organized and operating under the laws of the State of North Carolina and having a principal place of business at 25 Lighthouse Road, Ocracoke, North Carolina, 27960.

3. Opposer is the owner of U.S. Trademark Application Serial No. 86/493,498 for the mark 'COKE HEAD for use in connection with "Apparel, namely, shirts, sweatshirts, pullover sweatshirts, hooded sweatshirts, tank tops, athletic tank tops, t-shirts, long-sleeved shirts, short-sleeved shirts, aprons, and bibs for babies; Head wear, namely, hats and visors" goods ("Opposer's Goods") in International Class 25.

4. Applicant's application contains the statement that "the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 08/13/2012, and first used in commerce at least as early as 08/13/2012, and is now in use in such commerce." The application also contains a declaration as to the truth of applicant's statements in the application.

5. Upon information and belief, Applicant did not use the 'COKE HEAD mark in connection with the Applicant's Goods in commerce on or any time prior to at least September 15, 2012, the date of first use in commerce by Opposer.

6. Upon information and belief, Applicant made false statements as to his use of the mark in commerce and the dates of first use with the intent to procure a registration to which Applicant was not entitled.

7. Upon information and belief, Applicant's false statements were made knowingly. Applicant made knowing false statements as to the use of his mark in commerce and the dates of first use of that mark with the intent to procure a registration to which Applicant was not entitled.

8. Applicant's application also contains a specimen of use and the statement that "The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services."
9. Upon information and belief, the alleged specimen provided by Applicant was not in use in commerce at least as early as the filing date of Applicant's application.
10. In response to an Office Action, Applicant submitted a substitute specimen on July 4, 2014 along with a statement that "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application."
11. Upon information and belief, the alleged substitute specimen provided by Applicant was not in use in commerce at least as early as the filing date of Applicant's application.
12. Upon information and belief, the alleged substitute specimen provided by Applicant was not in use in commerce by or on behalf of Applicant.
13. Upon information and belief, Applicant made the false statements as to the use of the specimens with the intent to procure a registration to which Applicant was not entitled.
14. Upon information and belief, Applicant's false statements were made knowingly. Applicant made knowing false statements as to the use of the specimens with the intent to procure a registration to which Applicant was not entitled.
15. Applicant's application also contains the declarations by Applicant, including that "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely,

when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

16. Upon information and belief, Applicant was aware, as of August 9, 2013, of Opposer’s right to use the ‘COKE HEAD mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of Opposer, to cause confusion, or to cause mistake, or to deceive.

17. Upon information and belief, Applicant made the false statements as to Opposer’s right to use the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

18. Upon information and belief, Applicant’s false statements were made knowingly. Applicant made knowing false statements as to Opposer’s right to use the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

19. Upon information and belief, Applicant did not have a genuine belief, as of August 9, 2013, that he was the owner of the ‘COKE HEAD mark sought to be registered.

20. Upon information and belief, Applicant made the false statements as to his ownership of the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

21. Upon information and belief, Applicant’s false statements were made knowingly. Applicant made knowing false statements as to his ownership of the ‘COKE HEAD mark with the intent to procure a registration to which Applicant was not entitled.

22. Applicant was successful in procuring favorable examination, allowance and publication of the application as a result of having made any or all of the aforementioned false statements.

23. Applicant's application was filed, allowed and published based solely on Applicant's alleged actual use of the 'COKE HEAD mark in commerce. Upon information and belief, Applicant has not made bona fide use in commerce at any time prior to or on the filing date of the application. Applicant's application is therefore void and invalid for lack of a filing basis.

24. In the alternative, upon information and belief, if Applicant had made any use in commerce of the 'COKE HEAD mark prior to or on the filing date of the application, such use was not a bona fide use in commerce, and was further unlawful as unauthorized use of Opposer's mark. Applicant's application is therefore void and invalid for lack of a filing basis.

25. At least by virtue of Applicant's failure to use the 'COKE HEAD mark in commerce on or before September 15, 2012, Opposer has senior rights in said mark and priority in use.

26. Applicant's mark so resembles a mark or trade name previously used in the United States by Opposer and not abandoned, as to be likely, when used on or in connection with the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer requests that the Board sustain Opposer's opposition of U.S. Trademark Application Serial No. 86/033,388 and deny registration thereof.

Respectfully submitted,

Date: 31 December 2014

/s/ Matthew J. Schonauer

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Attorneys for Opposer 3PMC, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. Mail this 31st day of December, 2014 upon the following attorney of record:

Trevor P. Schmidt
Hutchison PLLC
3110 Edwards Mill Road, Suite 300
Raleigh, North Carolina 27612

/s/ Matthew J. Schonauer
Matthew J. Schonauer